

## IMPLEMENTATION OF EUROPEAN STANDARDS IN AREA OF HUMAN RIGHTS IN UKRAINE

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Modern development of Ukraine as a social constitutional state requires the improvement of national and international legal mechanisms for strengthening and ensuring the constitutional rights and human freedoms, which were proclaimed in the Constitution of Ukraine [1]. Our country's entry to the European legal area will facilitate further development towards strengthening democracy and Rule of Law.

The problem of implementation of European standards in the area of human rights requires first solving the issue of the position of relevant international treaties in the national legal system and their validity. According to Part 1, Art. 9 of the Constitution of Ukraine international treaties in force, ratified by the Verkhovna Rada of Ukraine, is one of the main parts of the national legislation of Ukraine. According to the Decision of the Constitutional Court of Ukraine on July 9, 1998 № 12-rp/98, under the term "legislation" we must perceive adopted within the powers and according to the Constitution and laws of Ukraine: laws of Ukraine; international treaties of Ukraine in force, ratified by the Verkhovna Rada of Ukraine; Resolutions of the Verkhovna Rada of Ukraine; Decrees of the President of Ukraine; Decrees and Resolutions of the Cabinet of Ministers of Ukraine [2].

The principle, according to which international treaties are part of national legislation, is saved by the Civil Code of Ukraine (Part 1, Art. 10) [3], the Family Code of Ukraine (Part 1, Art. 13) [4] and other legislative acts of Ukraine. According to Art. 3 Criminal Code of Ukraine, legislation of Ukraine about criminal liability is made by Criminal Code of Ukraine, which is based on the Constitution of Ukraine and the generally recognized principles and norms of international law [5]. Laws of Ukraine about criminal liability must comply with the provisions contained in existing international treaties ratified by the Verkhovna Rada of Ukraine.

Except general problems, both at the legislative level and at the legal practice level, there are many difficulties regarding the implementation of European standards providing of particular rights the individuals, including the socio-economic sphere.

The European Convention on Human Rights is at the heart of European human rights' system, which serves as a model for the establishment of appropriate systems in other regions of the world. This system has opened new ways for human rights' protection by providing right for individuals to file complaints about human rights' violations directly to the European Court, for development of Case Law that creates opportunities for changing the legislation or enforcement practice at the national level with a particular positive result.

It should be noted that, despite the recommendations of the Committee of Ministers, there wasn't ensured any effective implementation of core human rights standards defined in the Convention and other key legal instruments of the Council of Europe into national legislation and enforcement practice. It is problematically because the confidence to the European system of human rights' defense ultimately depends on how well defined standards implemented in practice at national level.

In order to overcome the gap between accepted standards and the actual state of things successfully, we need to take comprehensive and systematic measures. Implementation of appropriate policy needs making a coherent national strategy and plan of actions for its realization. In this context, it is important to emphasize the role of the network of national human rights' institutions of the Council of Europe, established for the exchange of best experience between national non-judicial mechanisms of human rights protection. Their involvement in the development of appropriate action plans proved to be very useful.

Development and implementation of strategy and action plan for solving problems in sphere of human rights' protection should be conducted with the active participation of the Ombudsman, human rights' defenders and civil society. Such comprehensive and common will contribute to the legitimacy of the plan, creating a sense of common responsibility and make their implementation effective. In order to further actions and analysis of the implementation of the strategy and action plan, there should be established clear timelines and criteria for their implementation. The process should include the commitment for presenting periodic reports to the international community.

Status of implementation of the action plan should be reviewed regularly, and after its ending, there should be made an independent assessment of the results. Analysis of the process of implementation of the action plan is as important in terms of participation, openness and transparency, as well as evaluation of outcomes. States should provide long-term support for the action plan at a high level by actions from the side of politicians

and the leadership of state authorities and other agencies responsible for its implementation. For providing the continuity of implementation of action plan, which comes at time of national or local elections, it should be considered and/or approved by the national parliament.

The strategy should be aimed at the integration of human rights in the daily work of government agencies and ensuring their effective coordination and cooperation at all levels through creating networks and forums for discussions and exchanging of relevant experience.

It is necessary to encourage local authorities to develop comprehensive basic researches, action plans, or similar documents at the local level. They should ensure regular monitoring of human rights' compliance at the local level and measures' coordination regarding solving issues in human rights' area. There should be created mechanisms for monitoring in spheres of health, education and social service protection, regardless whether they are provided by private individuals or by government agencies, using an approach based on human rights.

It is important to establish appropriate systems for data and analysis collection, including data about vulnerable groups of people. Collection of sensitive data should be voluntary and for preventing the identification of people, belonging to a particular group, there should be established appropriate safeguards. Official data should be supplemented with relevant information from national human rights' institutions and non-governmental organizations.

It is necessarily to follow the principle of independence of the Ombudsman - Parliament Commissioner for Human Rights. This institution should be provided with sufficient resources to perform its functions. Special attention should be given to strengthening the presence of the Ombudsman at the regional and local levels to facilitate access to institutions for people. The Ombudsman, if he is provided with sufficient resources, can encourage the creation of national systems of informing about principle of the Convention and the procedure of functioning of the European Court and thus making this information available to every interested person.

The value of international legal agreements in sphere of human rights in the regulation of interstate relations should not be deceived solely to application of their principles during the process of overcoming gaps and conflicts in national legislation. Courts in their practice should also apply to principles recognized by Ukraine, international legal treaties on human rights in the interpretation of the relevant norms of national legislation, which will help to ensure its application in the international human rights' standards.

A number of decisions of the Constitutional Court of Ukraine demonstrates the systematic and matching application of principles of the European Convention during litigation as concerning constitutionality of legislative acts, as official interpretation of the Constitution of Ukraine.

In considering the case on the constitutionality of national laws and other legal acts or providing an official interpretation of the Constitution and laws of Ukraine, the Constitutional Court abut on the based European Convention and judicial practice on the protection of rights and freedoms. However, it does not mean that the Court used all available utility property as a modern scientific thought and experience of foreign judicial constitutional review.

At the same time, it should be mentioned that recently in Ukraine concrete steps towards judicial reform were made. In particular, now the Parliament review a bill “On Amendments to the Constitution of Ukraine (on justice)” [6], one of the principles is the introduction of constitutional complaint as a form of individual access to constitutional justice. According to scientists, individual constitutional complaint – is individuals’ mean of protection of their constitutional rights from violations by acts or actions of public officials and public authorities. Moreover, it is not the one valid meaning of institute of the constitutional complaint in the system of constitutional control. It also serves as an important mean of ensuring of constitutional democracy and development, which are the basic parts of human rights. The constitutional complaint protecting the individual and his subjective rights, promotes the realization of one of the main principles of constitutional state – the principle of connectedness of all branches of government by the Constitution and Law, guaranteeing human rights. In addition, the constitutional complaint, as a specific tool for protecting the constitutional rights of individuals, provides a citizen the right as a side to enter into a legal dispute with the state and its organs, even with the legislator, thus contributing to the integration of citizens in the process of management of state and society [7].

Agree that in the present state-legal conditions there should be established a constitutional complaint [8, p.130]. It will be important not only for increasing the level of protection of rights and freedoms, but also for promoting the establishment of a democratic statehood in Ukraine, implementation of great mission of the Constitution of Ukraine as the basis of democracy and civil society [9].

We believe that the constitutional appeal from individual citizens, first, improve the protection of rights of all citizens in Ukraine without any exception; second, increase the level of confidence to the Constitutional

Court of Ukraine, because, unfortunately, the highest level of trust among the citizens of Ukraine has only the European Court of Human Rights.

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